

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

**DIANE COWAN, minor, by her mother and
next friend, Mrs. Alberta Johnson, et al.;
FLOYD COWAN, JR., minor, by his mother
and next friend, Mrs. Alberta Johnson, et al.;
LENDEN SANDERS; MACK SANDERS;
CRYSTAL WILLIAMS; AMELIA WESLEY;
DASHANDA FRAZIER; ANGINETTE
TERRELL PAYNE; ANTONIO LEWIS;
BRENDA LEWIS;**

PLAINTIFFS

and

UNITED STATES OF AMERICA

INTERVENOR-PLAINTIFF

V.

NO. 2:65-CV-00031-DMB

**BOLIVAR COUNTY BOARD OF
EDUCATION, et al.**

DEFENDANTS

ORDER

On May 13, 2016, this Court entered a Memorandum Opinion and Order adopting the desegregation plan proposed by the United States of America, which calls for the consolidation of the Cleveland School District's high schools and the consolidation of its middle schools. Doc. #215 at 96.

On July 11, 2016, the District filed a notice of appeal with the Fifth Circuit Court of Appeals regarding the Court's May 13, 2016, desegregation order. Doc. #219. On August 15, 2016, the District filed a motion to modify the May 13, 2016, desegregation order. Doc. #221. The District asked the Court to modify the desegregation plan adopted by the Court such that:

All sixth-grade students will be assigned to the Walter Robinson Achievement Center (WRAC) (except for sixth-grade students at Hayes Cooper and Bell Academy), and all seventh through twelfth-grade students will attend Margaret Green/Cleveland High School. The District will construct a new ninth-grade wing

at Margaret Green. D.M. Smith Middle School and East Side High School will be closed.

Id. at 2. Simultaneously, the District filed a motion asking this Court to stay its May 13, 2016, order “pending a ruling on the District’s proposed consolidation plan, or in the alternative, for a stay pending appeal.” Doc. #223 at 1.

On August 16, 2016, this Court issued an order denying the motion to modify because, based on the evidence submitted by the District, the Court could not “conclude that the proposed modification is constitutional.” Doc. #225 at 4. In the same order, the Court ordered expedited briefing on the motion to stay. *Id.* at 5.

Ten days later, on August 26, 2016, the United States, joined by the plaintiffs, filed a response in opposition to the motion to stay. Doc. #226. The District subsequently replied in support of the motion. Doc. #229.

On August 30, 2016, the District filed a motion asking the Court to reconsider its order denying the motion to modify. Doc. #227. The United States responded in opposition to the motion and the District timely replied. Doc. #230; Doc. #231.

On September 22, 2016, this Court issued an order setting a timeline for compliance with its May 13, 2016, opinion. Doc. #233. One week later, on September 29, 2016, the Court denied the District’s motion to stay and deferred the District’s motion for reconsideration pending an expedited evidentiary hearing on the District’s proposed modification and the submission of a memorandum brief by the United States and Private Plaintiffs addressing the issue of the proposed modification’s constitutionality. Doc. #235. In the order, the Court identified specific areas where the proposed modification omitted “key information.” *Id.* at 4.

The following day, the Court convened a telephonic conference with the parties to discuss the timing of the evidentiary hearing and any necessary discovery. Doc. #236. At the

conclusion of the conference, the Court directed the parties to submit proposed schedules for briefing, discovery, and a hearing on the issues surrounding the District's proposed modification. The parties submitted proposed schedules on October 3, 2016. Doc. #237; Doc. #238.

Upon consideration of the parties' proposed schedules, it is **ORDERED**:

1. On or before October 14, 2016, the District shall file a formal version of its proposed modified desegregation plan ("Modified Plan"), which is to include the following: (a) the information specified in paragraph 5 of the Court's June 18, 2014, scheduling order, except that such information shall be updated for the 2016-2017 and 2017-2018 academic years; (b) the missing "key information" identified by this Court's September 29, 2016, order; (c) information on the estimated cost for repairs, renovations, and additions contemplated by the Modified Plan, including any premiums for expedited construction; (d) the latest possible date the Court could order the implementation of the Modified Plan in order to have such plan implemented for the 2016-2017 academic year; (e) a detailed description of any contingency plan(s) if the Modified Plan cannot be implemented as proposed by the 2016-2017 academic year; (f) information on the estimated cost and proposed timing of such contingency plan(s); and (g) any other information that might aid the efficient review of the Modified Plan;

2. On or before October 21, 2016, the United States and Private Plaintiffs shall file with the Court, jointly or separately, a memorandum brief stating their objections, if any, to the District's proposed plan;

3. At 10:30 a.m. on October 25, 2016, the Court will convene a telephonic conference to set a schedule for discovery and the date for an evidentiary hearing;¹ and

¹ To that end, counsel for the parties shall e-mail the Court's chambers at Judge_Brown@msnd.uscourts.gov on or before October 11, 2016, with all dates in November 2016, December 2016, and January 2017, when they are available for such hearing.

4. Until ordered otherwise, the District remains bound to comply with this Court's September 22, 2016, order setting forth the timeline for the consolidation of the District's schools in accordance with the May 13, 2016, order.

SO ORDERED, this 4th day of October, 2016.

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE